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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,796	04/09/2004	Gary Lee Boomershine	030705	2841
35501	7590	01/11/2005	EXAMINER	
LAFKAS PATENT LLC 7811 LAUREL AVENUE CINCINNATI, OH 45243			FULTON, CHRISTOPHER W	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/822,796

Applicant(s)

BOOMERSHINE, GARY LEE

Examiner

Christopher W. Fulton

Art Unit

2859

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-22 is/are rejected.
- 7) ☒ Claim(s) 2 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/9/04. (2 Pages)
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

1. Claims 10, 15, and 19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 10 and 19 are not further limiting because "any geometrical shape" is inherently included in the independent claims. Claim 15 is not further limiting because the limitations of claim 15 is directed to the construction materials which are not being claimed in the independent claim.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3, 9-11, and 14-16 are rejected under 35 U.S.C. 102(a and e) as being anticipated by Wedekind et al.

The device as claimed is disclosed by Wedekind et al with a single layer material with an adhesive backing having a protective layer, the device having one or more lines of weakness that permit snapping off parts of the template, and the device having printed material on the top side of the device.

4. Claims 17 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Snider.

The method as claimed is disclosed by Snider with a single layer material with sections that are removed depending on the area to be used.

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 3-6, 9-16, 18, 19, 21, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snider in view of Wedekind et al.

The device and method as claimed is disclosed by Snider as stated in the rejection recited above for claims 17 and 20, but lacks the single layer having lines of weakness being made of styrene. Wedekind et al teaches using lines of weakness in a template to remove sections of the template when desired. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use lines of weakness in the device of Snider as taught by Wedekind et al to remove sections of the device when desired. Styrene is an old and well known

template material to guide a marking element. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the device of the combination of Snider and Wedekind et al out of styrene to guide the marking device.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snider in view of Wedekind et al as applied to claims 1, 3-6, 9-16, 18, 19, 21, and 22 above, and further in view of Kerry, Sr.

8. The device as claimed is disclosed by the combination of Snider and Wedekind et al as stated in the rejection recited above for claims 1, 3-6, 9-16, 18, 19, 21, and 22, but lacks the lines of weakness being diagonal. Kerry, Sr. teaches using diagonal slots on a template to mark diagonal lines. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use diagonal lines of weakness in the device of the combination of Snider and Wedekind et al as taught by Kerry, Sr. to mark diagonal lines on the workpiece.

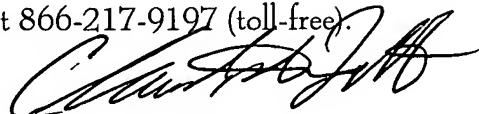
*Allowable Subject Matter*

9. Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher W. Fulton whose telephone number is (571) 272-2242. The examiner can normally be reached on M-Th 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Christopher W. Fulton  
Primary Examiner  
Art Unit 2859

CWF